

## MINUTES

### **WARRICK COUNTY AREA PLAN COMMISSION**

Regular meeting held in Commissioners Meeting Room,

Third Floor, Historic Court House,

Boonville, IN

Monday, December 10, 2012, 6:00 PM

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Guy Gentry, President, Amanda Mosiman, Mike Moesner, Brad Overton, Marlin Weisheit and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer and Tara Dickerson, Staff.

**MEMBERS ABSENT:** Jeff Valiant

**MINUTES:** Upon a motion made by Mike Moesner and seconded by Marlin Weisheit, the Minutes of the last regular meeting held November 13, 2012, were approved as circulated.

**RULES OF PROCEDURE** – Amendment *Con't from November 13, 2012. Continue to January 13, 2013.*

Mrs. Rector stated she is still working on the Rules and there will be some new Board members after the first of the year and she thought they would start off the New Year with the new Rules. She said what she is going to do is email them to them beforehand. She said she is highlighting the changes so they will know what is being changed.

Brad Overton made a motion to table the Rules of Procedure until next month. The motion was seconded by Amanda Mosiman and unanimously carried.

The President explained the Rules of Procedure to the audience.

### **SUBDIVISION FOR PRIMARY PLAT APPROVAL:**

**PP-12-09 – Terra Estates Subdivision No. 2** by Terra Estates, LLC, Thomas Merrill, Managing Member. OWNERS: Thomas J. & Kathy S. Merrill. A replat of lot 12 in Terra Estates Subdivision and a replat of lots 29 and 30 in Spring Lake Subdivision Phase II being 43.651 acres located on the E side of State St. (W 650) 0' SE of the intersection formed by State St. & Millersburg Rd. (N 250) with the E side of property being at the western end of Lake Shore Dr., Ohio Twp. *Complete legal on file. Advertised in the Boonville Standard November 29, 2012.*

Tom Merrill and Scot Buedel, Cash Wagner Assoc. were present.

The President called for a staff report.

Mrs. Rector said they have all the return receipts from certified mail of notice of this meeting to the adjacent property owners except for Michael and Stacey Elpers; Kip and Jennifer Chapman; Charles and Karen Postlethweight. She said all the lot owners in each subdivision were also noticed and they were mailed to the address on file in the Auditor's Office on 11/16/2012. She said this property is zoned Agriculture and CON Recreation and Conservancy which requires ½ acre lot unless a septic site is required and then they need 2.5 acres. She added there is no flood plain on the property and this subdivision consists of eight lots with the acreage ranging from 2.5 acres to 15.7 acres. She added the average lot size is 5.4 acres. She stated the County Commissioners ruled today that no improvements would be required to State Street, Millersburg Road or Lake Shore Drive and the Drainage Board ruled that no additional drainage plans would be required. Mrs. Rector added they have approved septic sites shown on the plat and they have a letter from Chandler stating they have sufficient pressure and flow to serve the subdivision with water. She further explained this is an eight lot residential subdivision and it is a replat of lot 12 in Terra Estates and a replat of lots 29 & 30 in Spring Lake II. She said the existing Lot 12 in Terra Estates is a 38 acre lot and is being split into six lots ranging in size of 2.5 acres to 15.7 acres. She added those lot numbers are 1,2,3,4,5,8. She further stated the existing lots 29 and 30 in Spring Lake II will become lots 7 & 6 in this new subdivision and will be reconfigured in order for two of the proposed lots to have frontage on Lake Shore Drive. She said four lots will then access Lake Shore Drive; three will front State Street and one lot fronts State Street and Millersburg Road. She added the plat is in technical conformity with the Subdivision Control Ordinance.

The applicants had nothing to add.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Marlin Weisheit made a motion to approve PP-12-09. The motion was seconded by Mike Moesner and unanimously carried.

### **OTHER BUSINESS:**

The President stated they were going to deviate from the published agenda in order to hear the complaints before dealing with the Vectren Easement issue.

**Formal Complaint** ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage ~ Progress Report.

Isaiah Schnell was present.

Mrs. Rector said they should all have a report in their packets. She said they indicate the number of tires they have picked up since November is 825 tires and they hauled away 8,176. She said Mr. Schnell reported to them via email that they still don't have the shredder up and running.

Isaiah Schnell said he told them three months ago he was going to have an electrician look at it and they did and he said it was okay. He said they also had an engineer come in and work on it because the teeth on it are not all the same size and he also found a leak on it. He said they don't have the money to get it working and so they have gone back to the old way. He commented on his fathers' health issues and said he and his mom are still making progress. He added they are working on the back of the property and apologized they aren't as far as they wanted.

Guy Gentry asked how long the State gave them.

Isaiah Schnell said they gave them nine months from September.

Mrs. Rector said she thinks they wanted him back at their April or May meeting.

Guy Gentry said they appreciate the work they have been doing and keep up the progress.

**Formal Complaint** ~ Elizabeth Ison ~ 966 Russell Road ~Alleged Junk/Salvage Yard and operation of trash sorting business in an "A" Agriculture zoning district. Cease and desist letter sent November 26, 2012.

Gary Crickmer was present and stated Ms. Ison is his wife and he has a letter from her stating she is at a function with their son. He said he is missing the basketball game in order to appear here.

The President called for a staff report.

Mrs. Rector said there was a complaint filed August 6, 2012 stating there was *trash around and outside the building and branches and old tree roots in back of the property. Intermittent care and maintenance of property. Cars parked over entire property along with ski boat and water craft. Some cars are running and some are old & not running.* She said the Zoning Inspector went to the property that same day and reported *I have inspected this address and found the complaint to be true. Pole Barn is full – doors are open and trash is everywhere in the yard.* She said we sent a letter to Mrs. Ison on August 31<sup>st</sup> informing her of the complaint and gave her ten days to contact the office upon receipt of the letter. She added that Mrs. Ison telephoned the office on September 14<sup>th</sup> when I was out of the office and said she was to call back on Monday. Mrs. Rector said Gary Crickmer telephoned the office on September 17<sup>th</sup> and told me Mrs. Ison was ill and that his name is on the property now.(County records still show Mrs. Ison as the sole owner.) She said he further said he had done a lot of clean up. She said the Zoning Inspector went to the property on September 18<sup>th</sup> and reported *I have made a site visit to 966 Russell Rd. There are still a few items that need to be taken care of. The owner said he is still working on it and that it should be done in a week.* She added he went back on September 27<sup>th</sup> and reported

there were tarps over the items in the yard and the owner was putting up fencing around the area and based on that we closed the file on that date.

Mrs. Rector said on November 8, 2012, another complaint was filed saying *E. Ison and J. Critten are using the area for a junk yard. They are using outside help to carry junk in and after a period of time they take it off and then get more junk. Cars are all over.* She said the Zoning Inspector went back to the property on November 8, 2012 and reported *There seems to be a lot of stuff that has been left at this site again.* She added the complainant came back in on November 15<sup>th</sup> to file an additional complaint saying *the property is in a residential area and is being used as a commercial endeavor. They bring trash in, sort through it for aluminum and such to earn money. Four people are hired to do the work. The area is in poor condition. Photos have been taken of new items, refrigerators, washing machines etc.* She said we sent a cease and desist letter on November 26, 2012 again informing them of the complaint and the violation and informing them they must appear at this meeting. She said she felt that since she had gone through this once previously she wanted them to appear before the Board. She added the Inspector went back to the property again this morning and took photos and reports *there is still a lot of stuff in the front and on the side of the building.*

Mr. Crickmer submitted a copy of the letter from his wife as to why she can't attend tonight and a letter of support from some of his neighbors. (Copy on file.)

Guy Gentry asked if he is running a business at this location. (*the letters indicated there was*)

Mr. Crickmer said yes he has a construction business, GWC Construction. He said they checked with everyone to see if there was anything they needed to do and there was nothing they had to do.

Guy Gentry said so he has three to four employees that reports to work at this property.

Mr. Crickmer said yes but they go off to jobs. He said they come to his house and leave their cars and they all ride together to the job site. He said they have also picked up a contract from the government to maintain repo homes.

Mrs. Rector asked how much property they have.

Mr. Crickmer said they have just a tad over 1.5 acres.

Mrs. Rector commented he wouldn't qualify for a home workshop then.

Mr. Crickmer said they don't really work out of there; he keeps his supplies at home but as far as them using it as a dumpsite – no they don't. He said the cars on his property all run and he has moved them around on the property. He said he has one antique one in the shop now.

Guy Gentry said so they all run but are they licensed.

Mr. Crickmer said he doesn't like to work on cars and he has one that doesn't idle right but they are all operable. He said when the Inspector came by the first time he said the complaint was that cars were up on jacks being worked on. He again said he doesn't like to work on cars. He said he takes his cars to a shop to be worked on. He said as far as using the property as a transfer station to sort through garbage they don't do that either. He said if they go to a house and they do have to clean anything up they load it then and the metal would be separated then and unload that at the house. He said he can't understand why he can't recycle that. He said the Sheriff was at his house again this morning and this neighbor has been a nuisance ever since day one. He commented this has been on going and he does everything he can to aggravate them. He said all of his neighbors get along except for the complainant.

Mrs. Rector said he has to admit that when this first started there was a lot of stuff on that property and it looked really bad.

Mr. Crickmer said what they say to him can't be worse than what his wife is saying to him. He said she is on him terrible and he admits it. He said that is why he got the dumpster out there.

Mrs. Rector said it definitely looks a lot better but now they have to deal with him running a business out of the residence. She said it is not zoned for a business and there is no way around that.

Mr. Crickmer said so when he went to check what he needed and was told he didn't need anything....

Mrs. Rector said she doesn't know who he talked to but if he had talked to her and the office they would have told him.

Mr. Crickmer said he can move his business to Richland if he needed to.

Discussion ensued over what zoning he would need to for his business.

Guy Gentry asked how many vehicles Mr. Crickmer owned.

Mr. Crickmer said he has two trucks and an enclosed trailer.

Amanda Mosiman asked if his employees park there.

Mr. Crickmer said some of them do and some of them don't.

Further discussion ensued that Mr. Crickmer was a builder/remodeler and his employees come there and leave their personal vehicles and take the work vehicles to the job site. It was determined the required zoning would be a "C-4" General Commercial zoning.

Amanda Mosiman asked how long the contract lasts.

Mr. Crickmer said as long as he keeps up his end of the bargain. He said if they would stop taking houses he would have work until 2020.

Mrs. Rector said basically he has cleaned up his yard.

Mr. Crickmer said he isn't done yet; he is still working on it.

Mrs. Rector said in order from him to have his contracting business at this property with his employees, etc. he will need a "C-4" rezoning. She explained the rezoning process to Mr. Crickmer. She said he could file a rezoning request that would limit it to only his type of business. She said they can't promise the petition will be passed by this Board or the Commissioners but rezoning is his only option other than moving it to a commercial property. She said he can't bring this stuff to his yard and go through it and have this business.

Mr. Crickmer said that is not what they do. He said he wants it noted because the complainant acts like they dump trash there and then go through it but they don't do that. He said he takes stuff to the auction; a guy comes by regularly to take stuff to the auction. He said he puts stuff in storage and then it goes to the auction. He said his truck drops stuff off for storage and they drop scrap stuff off at his house and they load the trailer from there and take it to the scrap yard. He said the metal and aluminum is the only thing that comes off there.

Mrs. Rector said that is the sort of business he can't do on this property with his residence unless it is zoned properly.

Mr. Crickmer said so if he wasn't doing the contracting part (with the government) would it still be the same.

Guy Gentry said if he is running that business out of his home then he can't because it isn't zoned for that. He said it isn't tied to that contract; that is his business. He said if he works on someone's house and has employees coming to the property and it is his business address then he needs the correct zoning.

Mr. Crickmer asked if it would be different if he told his employees to drive to the job.

Mrs. Rector said the only thing he could do is if he had one commercial vehicle less than 1.5 tons that he drives home each night. He said he couldn't have employees coming to the house and he couldn't be bringing the materials to his house; he could just have his truck and a little office in part of the house and he would need to file for a Special Use for a home occupation; otherwise he has to rezone.

Mr. Crickmer said he will try to rezone.

Discussion ensued over filing deadlines.

Guy Gentry commented he appreciates the work he has done to clean up the property but the business is not in compliance with the ordinance and called for a motion to give an amount of time to come into compliance.

Amanda Mosiman made a motion to grant Mr. Crickmer two months to get his rezoning petition filed and appear in front of this Board at their February 11, 2013 meeting. The motion was seconded by Mike Moesner and unanimously carried.

Mrs. Rector said so she understands their wishes; the business has to be gone and they can tell it is gone, or a rezoning has to be filed before the February meeting. She said if he moves the business to another location he needs to inform the office so they can do an inspection.

**Formal Complaint** ~ Duc & Thanh-Tram Nguyen ~ 8988 Idaho Dr. ~ Privacy fence exceeding maximum height of 4' in required front yard.

Mrs. Rector said they were in violation by having a 6' high fence in the required front yard when you are only allowed four feet. She said two feet of the fence was lattice work and they have taken down the lattice work fencing so they are no longer in violation.

**VECTREN EASEMENT** ~ Perry Cloyd, PS, Manager, Encroachment Program ~ 200 S. Plank Road ~ Structure in easement without permit

Perry Cloyd was present.

The President called for a staff report.

Mrs. Rector said she will give a brief report and then Attorney Doll will handle the discussion. She said the office issued a permit on May 20, 2003 for a single family dwelling and unattached storage building and per the plot plan, the unattached storage building was to be 2400 square feet and was to be located 45' off the south property line. She added the 2009 aerial photos show the buildings as presented on the 2003 plot plan; however, the 2011 aerial photos show an addition to the unattached accessory building – no permits were issued for this addition. She said this is the structure that Mr. Cloyd feels is within the Vectren Easement and a copy of his letter is included in your packets. She said she did give Attorney Doll the packet a few weeks ago to review and they have talked about this matter via emails and she believes Attorney Doll has an opinion. Mrs. Rector said basically Mr. Cloyd feels the Plan Commission should take care of the structure being in the easement due to it not having an Improvement Location Permit.

Mr. Cloyd said he does have some survey information and that was included in his packet along with their 1957 deed when they bought the right for the easement to prohibit structures in it. He said beyond that in a brief review of the ordinance there are clearly statements saying there are to be no construction within an easement. He said they have the legal ability to back that up. He said he and Mrs. Rector discussed this but he has not filed a formal complaint. He said they discussed him coming here to have this conversation and decide how to proceed. He said Vectren has taken a pro-active stance on their easements to keep them clear and safe. He said he has been

with Vectren a couple of years and it is his responsibility to review and address these issues within their electric and gas easements. He said this matter came up in a routine helicopter inspection and he isn't sure of the date but other than that they have all of the information.

Attorney Doll said in his packet he has a copy of a ThinkGIS aerial photo from 2009 and obviously the addition doesn't exist but the towers do. He asked when the transmission line was built by Vectren; did it pre-date the house.

Mr. Cloyd said the easement was purchased in 1957. He said Larry Rogers is the manager of the electric transmission engineering group and he may be able to give them some more details.

Larry Rogers, Manager of Substation Transmission Engineering for Vectren, said the line was built in a five year period between 1957 and 1962 and was there long before the house.

Attorney Doll said so they know in 2009 this building wasn't there and then in 2011 it is there. He asked when Vectren discovered it.

Mr. Cloyd said he doesn't know the discovery date but it was reported to him this year. He said they have been talking about this for a few months.

Attorney Doll asked if Vectren supplied the survey of their right of way to this Board. (They did) He said it appears that right of way stakes have been driven into the grass around this property and there is a right of way stake literally in the landscaping of the house. He said that implies the driveway to the house is within the right of way.

Mr. Cloyd said that is correct.

Attorney Doll asked if that is a problem; do they object to the driveway or do they just object to the building.

Mr. Cloyd said to the building. He said the driveway is on the ground and the issue with structures is the clearance from the electric lines.

Attorney Doll said so if this was a low building they might not be complaining about it.

Mr. Cloyd said that is not true, they would complain about any building.

Attorney Doll said but they don't complain about driveways; he just wanted to understand if they had one problem or two problems from Vectren's point of view.

Mr. Cloyd said they do have an issue with the trees because the rights they purchased prohibit trees but they are not asking them to address that; they will address that themselves.

Attorney Doll said so this is a transmission line and asked what the voltage was.



The answer was inaudible due to others speaking simultaneously.

Attorney Doll said it seems there are a couple of potential remedies for the building. He said one is there is a section of the ordinance that allows this Board to take them to court for the violation; unfortunately that costs the taxpayers of Warrick County a lot of money. He said he doesn't know how expensive of a building this is but they may fight this although not having a permit for the building isn't much in the landowners favor. He said Vectren has an easement right of way that they paid good money for years ago and that runs with the land and it says the grantors shall not erect or maintain any improvements or structures except fences within the same distance of the centerline of any line of structures. He asked why this Board should ask the taxpayers of Warrick County to go to court to protect Vectren's right – and they are worthy of protection when they have a similar ability to go to court against this property owner for encroaching within their contract easement right of way. He asked why it wouldn't be Vectren's ability to go to court and not charge the taxpayers for the cost of having to do that.

Mr. Cloyd said the best answer he has is they are asking for enforcement of local law. He said it is the law of the land and had the law been complied with this issue would not have existed.

Attorney Doll said there is no doubt about that but it seems to him they also have a private remedy; it isn't just a public remedy to enforce the local county ordinance, there is a private remedy under the easement right of way contract that was signed back in the 1950's.

Mr. Cloyd said he agrees with that.

Attorney Doll said he is wondering why Vectren is not electing to file an encroachment under the right of way action and ask the court to order the encroachment to cease and desist.

Mr. Cloyd said he isn't saying that Vectren won't do that. He said the initial remedy they have is the process set in place for structures and that process wasn't followed. He said it seemed logical in the chain of command to ask them first to consider this and take a look at it under the ordinance. He said if that doesn't take place then Vectren will be forced to follow the other route.

Attorney Doll asked who owned the house.

Mike Moesner asked if they have been contacted about the encroachment.

Mr. Cloyd said their field people made an informal contact with them in the very beginning.

Mike Moesner said when they discovered the encroachment.

Mr. Cloyd said when their operations group discovered the building they made contact with the owner and had a brief discussion. He said it has not been followed through in detail; he is in a discovery phase and he wanted to have this conversation first and then he knows where he stands and knows what his options are and how he can proceed. He said he didn't really want to alarm the owner yet and...

Attorney Doll said so they don't know if there is a self-help remedy here; they don't know if the owner is officially contacted by Vectren and informed they are in violation of the easement and the building is a safety violation and would be asked to voluntarily resolve the issue they don't know if they would agree or not. He asked if Vectren would be willing to take that step first before this Board decides whether or not to authorize any litigation. He said he thinks that is a fair request from the Board.

Mr. Cloyd said absolutely.

Amanda Mosiman asked how many feet they are encroaching to which Mike Moesner said it looks like most of the addition.

Discussion ensued over the survey and photographs.

Attorney Doll said in Section 32 of the ordinance they have a procedure for enforcement against violators and it indicates that if any firm or person that violates the ordinance (i.e. builds a structure in violation of the terms of regulations) they have the ability to enforce it. He said they can ask the prosecuting attorney to enforce which never happens in any county or they can go to court and ask for an injunction compelling them to do an act; in this case get out of the right of way. He said they would have to prove the existence of the right of way and prove no permit was given for the construction of the structure and they would have to prove that Vectren hasn't given consent for the structure to be in their right of way. He said at that point in time the Judge would issue a ruling and more than likely he would give them a specific time to cease and desist and remove the building. He said if they do not do that the Judge can award damages and issue a fine up to \$300 per day for each day the violation continues unabated. He said the history in Warrick County for violations has been quite strong. He said it is a taxpayers expense and he would encourage the Board first with Vectren's co-operation to find out whether or not a self-help remedy could be found. He said he would like to be kept apprised of this; a transmission line is not an un-dangerous thing and you should not have buildings underneath them. He said the Board needs to also decide if Vectren is in equally as strong a position to be able to enforce its rights through suit under violation of its easement. He said the common law would give them similar remedies as they would to this Board. He said they could seek damages but they wouldn't get the \$300 a day fine. He said that \$300 a day fine can cause anyone to think.

Mike Moesner said it looks to him like Vectren would pursue their part of it but if they had a letter from the Board saying they are in violation of not getting a building permit and the courts could fine them up to \$300 per day. He said he thinks they should know that.

Attorney Doll said there is also nothing to prohibit a joint suit.

Marlin Weisheit said he thinks they need to send him a letter that it has been brought to their attention.

Attorney Doll said that would also help motivate self-help.

Guy Gentry said he thinks the contact should come first from Vectren to make the owners aware of it and then to see if they...the owner may be willing to remove it. He said if they aren't negotiable then they could let this Board know and then maybe they could do a letter and be a little more forceful.

Attorney Doll said they could certainly do that and let Vectren lead off and then if they don't get any satisfaction they could follow up and send letters at the same time and then from the point of view of safety and the right of way rights and the Board from the violation of the ordinance and the failure to get a permit when the structure was erected they could see if that is a persuasive set of events that would encourage them to fix the problem. He said if it doesn't then they can co-litigate. He said Vectren could file the suit and they could join it or vice versa; them to protect the right of way and the Board to enforce the ordinance.

Amanda Mosiman said Vectren is going to have to enforce the trees; that is something this Board can't do.

Attorney Doll agreed. He said that is his advice to the Board.

Mike Moesner asked how long it will take Vectren to contact the owners.

Mr. Cloyd said he can have a letter sent to them by the end of the week. He said he will send it registered mail so he knows they receive it and he will send a copy to the office. He said that is their normal process; if they have a problem they first do a polite request. He said it is a safety issue and if it isn't a safety issue they try to work with the owner. He said the problem is if you allow one then you have more and their preference is to keep the easement clear if they can. He said they have had great success with asking people to comply. He said they have had several small buildings in the easements in Newburgh and people have said they have been on the roof of the building and not had a problem and his response is they have been lucky. He said it is a matter of the right atmospheric conditions and whoever is up there won't come down (alive). He said he wanted to have this discussion first because this is a big building and it is metal and it is in violation of the ordinance. He said the other ones they had have not been a violation or they probably would have seen him sooner. He said he wanted this conversation so he knows what their thinking is and he knows how to proceed and get a standard operating procedure. He said he will be happy to make contact with the owners and start a conversation and see where they end up. He said they don't want to go to court; they prefer to have a polite conversation and get the response they need.

Brad Overton asked if they need a motion.

Mrs. Rector asked if they want to continue this to the February meeting to give them time to get the letter to the owners. She said the post office can hold a registered letter for 21 days and with the holidays coming up.

Attorney Doll said they could put this on next month's agenda for an update and by that time they should have the letter and a report back from him.

Discussion ensued whether Mr. Cloyd needs to appear next month since he has to drive from Columbus.

Mrs. Rector said clarified he is going to send a letter and copy her on it and then he will report to her what is going on and she will report it back to the Board. She said if he feels he needs to come back to the Board for them to take action then...

Guy Gentry said if he reports they got a negative response then he thinks they are at a point they know what they are going to do. He said there is no point in them coming back unless they want to.

Attorney Doll said just to help Mr. Cloyd, is it the inclination of the Board, if necessary, they will enforce the ordinance. The Board indicated they would and Attorney Doll said that gives Mr. Cloyd guidance.

Mr. Cloyd thanked the Board. He informed the Board that he usually sends the first letter and if he doesn't get a response he sends another letter. He said after the follow up letter he knows whether they will talk to him or not.

Discussion ensued they should send a letter certified mail and regular mail. Discussion also ensued over the time the post office can hold letters.

Attorney Doll said it would be nice to know what Vectren thought about their contact by the January meeting; otherwise they will be waiting until February.

Brad Overton made a motion to table this until the January 14, 2013, meeting. The motion was seconded by Marlin Weisheit and unanimously carried.

**ZONING DETERMINATIONS** – *Con't from November 13, 2012. Continue to January 14, 2013.*

Winery

Domesticated animals

Mrs. Rector said she is still researching these. She said she has looked up Monroe County and others and they are putting wineries in commercial districts and treat them like a bar unless you are just growing the grapes. She said there is also Indiana Code that protects them as well.

Discussion ensued over the requirement of a liquor license and how they could obtain a liquor license in an improperly zoned area.

Mrs. Rector said years ago the Surveyor had to certify to the zoning and location before an establishment could get a liquor license. She said they also had to certify if they were in the city limits or in the county but she doesn't know if the ABC Board requires that any longer.

Attorney Doll said it is on the application and normally it is questioned by the Alcoholic Beverage Officer who attends the local hearing. He said he doesn't know why it isn't happening here but that is how it normally happens.

Mrs. Rector said she will send them what she has and will try to have it all together for next month.

Amanda Mosiman said she won't be here next month.

Mrs. Rector she may not have it all together and they can put it off until February if they want.

Attorney Doll asked if it is holding up the business to which Mrs. Rector said it is already open.

#### **ATTORNEY BUSINESS:**

Attorney Doll said they went to the Rainey violation hearing last Friday and Mr. Rainey appeared and indicated to the Judge he could clean it up but he needed one more month and the Judge gave it to him.

Guy Gentry said there is no way it can be done; it looks worse than before.

Attorney Doll said they are due back in court on January 18, 2013 for hearing for violation.

Guy Gentry asked how you can appeal a Judge's ...he said they don't want any further delays. He said this has been over a year.

Attorney Doll said the Judge told Mr. Rainey that he would have hell to pay if it wasn't cleaned up in January.

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Brad Overton asked about a semi-truck parked in a parking lot over by the Tastee Freeze being used as a bill board.

Mrs. Rector stated that is sitting in the City of Boonville and not under their jurisdiction.

Marlin Weisheit said that the property has been rented by the company the semi is advertising and they have an office there.

#### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector passed out an excerpt from the ordinance { Article XX 1(c)}.

Attorney Doll said the article states *in no case shall there be more than one residential dwelling and it's accessory structures on one lot. In no case shall there be an accessory structure on property without the residential dwelling in a residentially zoned district unless a Variance is obtained.* He said they have a dispute concerning Lot 2 in Greenfield Farms. He said a gentleman owns lots 2 and 3 and he came in previously and asked for a permit to build a 24x30 accessory building. He said he is using it as a horse stable. Attorney Doll said the man has now come in to get a permit for a second structure, not a home on the same lot. He said it will be a shop and office and it will have a bathroom and the man has already install the septic system and done grading. He said the man is quite committed that he should have the right to build a second structure on that lot 2. He said he understands it is the ultimate goal of the man to build his residence on lot 3. He said he gave the man several different options as to how to remedy his problem. He said option one was to expand the current building and attach his shop and office area as an addition to the single building that was previously approved. He said the second option was to move the new building across the lot line because he doesn't have an accessory building on that lot and it would qualify for a permit. He said the third option is to ask this Board to interpret its ordinance and feel if they believe a person is entitled to more than one accessory building or not. He said if they determine he is not entitled to more than one accessory building, the fourth option would be for him to file an appeal with the Board of Zoning Appeals and ask for a Variance. He said they need this Board's direction as to whether he can have more than one accessory building.

Mrs. Rector said as she explained to Attorney Doll, in 2009 when they changed this ordinance, she thought this Board and the Commissioner's intention was to allow the accessory building and a house on these large lots that are residential subdivisions even though they are zoned Agriculture. She said before the ordinance was changed they were having people file for a Variance to allow an accessory building on the lot so they could store a lawn mower, etc. to maintain the lot before they built the house. She said the man was upset because he said he had explained all of this to staff and they knew he wanted to build another accessory building. She said people say a lot of things about what they are going to do in the future. She said Attorney Doll was going to the Drainage Board meeting today and so he came into the office after the meeting and talked to the gentleman. She said she is supposed to call him tonight and let him know what the Board decides because he has done quite a bit of work in preparation for this new building.

Guy Gentry clarified he owns two lots.

Amanda Mosiman said he owns two lots but he is only going to put his house on one lot. She said she thinks they are getting a little picky on his intended use on his own lot.

Marlin Weisheit said he is going to have six acres there between both lots.

Amanda Mosiman said so what they are trying to say is he can't have his office/pole barn and a horse barn.

Attorney Doll said he is waiting for the Board to tell him what this section means.

Guy Gentry said he thinks it is obvious what it means. He said it is one building per lot and if that is what they intend...

Marlin Weisheit said it is a subdivision. He said he lived on three acres one time and built a house, garage, a cabin and a lake (but it wasn't a subdivision).

Discussion ensued over the two lots and the location of the existing and proposed buildings. Discussion further ensued over the topography of the land and the septic sites.

Mrs. Rector said they need something established.

Attorney Doll said the Board needs to say if she can give him a permit because the ordinance is pretty clear they can't.

Mike Moesner said it just says one structure.

Guy Gentry said he could have a house.

Amanda Mosiman said so he can just have a house and one structure.

Mrs. Rector said not just one structure; if he had a house there he could have other buildings. She said if he would come in tomorrow for a permit for a house and this structure he would be fine. She said they would tie the two lots together on one permit and he would have six months to start construction and two years to finish. She said they need to understand this is not metes and bounds property; this is a lot in a residential subdivision.

Guy Gentry said so if he built a house he could have another building.

Mrs. Rector said you can have accessory structures with a residence but if you don't have a residence it says a structure. She said they aren't saying he can't ever have another building there but he has to build a house first.

Brad Overton said before the ordinance changed they couldn't do this at all.

Mrs. Rector said they had to get a Variance.

Attorney Doll said they would ask the Board of Zoning Appeals to be allowed to build the pole barn first and it was almost always granted. He said it was decided that needed to be changed and make it so you could build one building if you didn't have a house there. He said that is why the

ordinance was changed to accommodate that. He said this question is can he build more than one building.

Brad Overton asked if the Board of Zoning Appeals would have allowed more than one building without a residence.

Mrs. Rector said they would not.

Discussion ensued it was logical to build a pole building to store equipment in before they built their house.

Mrs. Rector said usually the Board of Zoning Appeals would give them a time period to have the house built. She said at one time the ordinance read if you had so many acres you get a permit for an accessory building if you built your house within two years.

Amanda Mosiman asked if there was any difference between a pole barn and a horse stable.

Attorney Doll said there is not; they are both structures.

Brad Overton said say he has 100 acres zoned Agriculture and he wants to put a cabin on the front fifty acres and a cabin on the back fifty acres...

Attorney Doll said he doesn't know if this applies. He said it would only apply if it was a building lot. He said what he is describing is a metes and bounds open described piece of property and it wouldn't be limited by this. He said Peabody Coal sold off several acres as lots and many of them said they couldn't be built upon but that would be a lot and this would apply; even if the lots were 25 acres. He said they are looking for direction for what to tell this man. He asked if they feel this is a problem that they need to fix or do they think it isn't broken.

Amanda Mosiman said she thinks it is broken.

Guy Gentry said by the way it is written right now, he doesn't think they can authorize Mrs. Rector to issue a permit for the second building.

Attorney Doll said he and Mrs. Rector agree with that and that is why he thinks the only way she could give him the permit is if this Board made and passed a motion for her to issue the permit.

Mike Moesner said he doesn't think they can. He said the man has other options to get his building.

Discussion ensued again over the location of the existing and proposed buildings. Discussion further ensued over possible locations of the proposed building.

Amanda Mosiman said he may not be able to move the building 20 feet. She said on some of her family's property they wouldn't be able to move structures that far.



Attorney Doll said the man didn't say he couldn't move it; he said he didn't want to. He said the man has already installed the septic system down the hill and leveled off the construction area and installed the driveway and he didn't want to move it.

Guy Gentry said this sounds like it could be a business.

Mrs. Rector said she asked him several times what the building was going to be used for and his answer was an office and a workshop. She said she kept asking him what the office was for and he said it was for paperwork for his horses. She said she asked how many horse he has to which he told her he had three. She said he also said he has dogs. She said she asked him what he was going to do with the shop and he told her if his horses needed something he would bring them in. She said he is putting a septic system in for one bedroom to hook into it.

Discussion ensued over the proposed building and if it could have living quarters in it.

Mrs. Rector said she told him to do that but he said he would have to build it to a different code. She said he could make the upstairs as an apartment and he would be given a permit for a single family dwelling.

Guy Gentry said he would recommend that is what they tell him and that is all they can issue on that piece of property at this time.

Attorney Doll said that is all they need to hear if that is the wishes of the Board.

Guy Gentry made a motion that from the information they have been given at this point in time the only permit that can be issued is for a single family dwelling. The motion was seconded by Marlin Weisheit. Amanda Mosiman voted against the motion and all other members voted for the motion; therefore it carried.

Mrs. Rector said she feels they need to revisit this and she feels it should state in a "residential subdivision". She said it should specify it is a residential subdivision.

Attorney Doll said that would defeat the purpose. He said the BZA heard case after case of people out in rural areas of the county who wanted to build an accessory building.

Mrs. Rector said the ordinance says residentially zoned subdivisions. She said if it would say residential subdivision then no matter what it would be specific.

Guy Gentry said this is a residential subdivision.

Attorney Doll said lots imply it is a subdivision.

Marlin Weisheit said once he gets his house build he can build lots of buildings.

Mike Moesner said it sounds like there is more going on there that he wants them to know.

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Mrs. Rector said she has given Attorney Doll a complaint regarding a coal mine and he is reviewing whether it has anything to do with this Board unless they have to get into the interpretation about the Flood Plain Ordinance.

Attorney Doll said he will.

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Mrs. Rector said a Mrs. Pennington has contacted the office and wants copies of all the 2011 minutes to see how often each Board member has attended the meetings.

Discussion ensued over why she wanted the Minutes and that she thought the Board was elected and not appointed.

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Mrs. Rector said she has found an Indiana Code regarding taking care of abandoned structures and she sent a copy to Attorney Doll, Attorney Long and Guy Gentry. She said she thought they may want to look it over in case they ever have another incident like they did in Fall Creek. She said it looks like it takes care of fines and everything.

She added that the Building Inspector said the house in Fall Creek has been removed down to the foundation but the neighbors still aren't happy and want orange fencing put around it.

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Being no other business the meeting adjourned at 7:35 p.m.

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Guy Gentry, President

ATTEST:

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Sherri Rector, Executive Director